

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re U.S. Utility Patent Application of

Butz, Stephen

Art Unit: 2163

Appln. No. 09/976,481

Examiner: Charles Edward Lu

Filed: 12 October 2001

For: SOFTWARE SYSTEM FOR QUANTITATIVE MEASUREMENT AND
ACCOUNTABILITY FOR SOCIAL SERVICES

Re: Petition for Revival of an Application for Patent Abandoned Unintentionally
Under 37 C.F.R. 1.137(b)

* * *

Date: August 14, 2006

Attention: Office of Petitions

To the Honorable Commissioner for Patents
Mail Stop Petition
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application became abandoned for failure to file a timely and proper reply in a timely manner to an Office Action dated 03 November 2005, pursuant to MPEP 700. The day of abandonment being 04 February 2006, the day after the expiration date set for filing such a Response.

THE APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS
APPLICATION under 37 C.F.R. 1.137(b).

Enclosed herewith is the small entity petition fee of \$750.00 required by 37 C.F.R. 1.17(m). Applicant claims small entity status pursuant to 37 C.F.R. 1.27.

Also enclosed herewith is the Response. Since this utility patent application was filed on or after June 8, 1995, no terminal disclaimer is required.

The entire delay in filing the required Response from the due date for filing the Response until the filing of a grantable petition under 37 C.F.R. 1.137(b) was unintentional.

The undersigned submits that a Response was timely filed but was apparently not received by the Patent and Trademark Office, and although timely receipt can be shown the Response lacked a proper Certificate of Facsimile Transmission, and is therefore being considered untimely.

Specifically, the undersigned prepared a Response and instructed his administrative assistant to file it by facsimile (with mail confirmation) to the art unit facsimile number listed in the Official Action, which was 703-872-9306. The administrative assistant Dimitri Michel (who's Declaration is attached) did so, but found that particular facsimile number to be non-functional. Mr. Michel called the art unit and was told that they had moved to Alexandria and was provided with a new facsimile number 571-272-8594. Mr. Michel prepared a different (this time generic facsimile cover sheet lacking a proper Certificate of Facsimile Transmission) and successfully faxed the Amendment to the new facsimile number (see Declaration of Michel, Appendix A). All pages of this facsimile and the cover sheet are shown as having been successfully and timely transmitted on January 19, 2006 (see TX REPORT). Nevertheless, the Amendment was not entered

Mr. Michel followed up with the Examiner by phone on April 5, 2006, and was informed that the Examiner had not received the Amendment. The Examiner requested a duplicate copy and this was duly faxed on April 5, 2006 (see Declaration of Michel, Appendix B). Mr. Michel followed up again on May 5, 2006 and was informed that the Amendment had not been received ostensibly because the 8594 number was not a central fax number. At this juncture the Examiner provided a central facsimile number 571-273-8300. Mr. Michel again faxed the Amendment to the central facsimile number 571-273-8300 (see Declaration of Michel, Appendix C), and followed up the next day to ensure proper receipt and consideration. He was informed that Amendment could not be considered as timely because the January 19, 2006 transmission was not to a central fax number, but apparently the Examiner's personal fax number. Mr. Michel believed that he had followed proper procedure, trying unsuccessfully to transmit to the art unit facsimile number listed in the Official Action, and relying instead on advice from Art Unit 2163 when he called and discovered that that art unit had moved, retransmitting (successfully) to the provided new facsimile number 571-272-8594. At that time he (and all others involved) were unaware that Mr. Michel had deviated from accepted procedure by using a generic facsimile cover sheet lacking a Certificate of Facsimile Transmission, and all assumed that the situation could be remedied by submitting proof that the Patent Office had received the faxed Response on January 19, 2006. (see Declaration of Michel, Appendix A).

Consequently, on June 9, 2006, the undersigned filed a Petition Under 37 CFR § 1.181(a) Requesting Withdrawal Of The Holding Of Abandonment. On Wednesday

August 2, 2006 Applicant received a Denial of this Petition Under 37 CFR § 1.181(a) which explained that a grantable petition under that section must be accompanied by proof that the Response transmitted by facsimile on January 19, 2006 was accompanied by a proper Certificate of Facsimile Transmission. Since it is now fairly clear that the Certificate of Facsimile Transmission was inadvertently omitted when Mr. Michel substituted a generic facsimile cover sheet (lacking a Certificate of Facsimile Transmission) to reflect the Art Unit's changed facsimile number, Applicant cannot give such proof. Nevertheless, the intent and persistence of Applicant in trying to file its Response and in trying to follow up to ensure proper consideration is thought to be ample evidence of its intent to respond, and submits that the entire delay in filing the required Response from the due date for filing the Response until the filing of a grantable petition under 37 C.F.R. 1.137(b) was unintentional.

Accordingly, the Applicant hereby petitions for revival of this application under 37 C.F.R. 1.137(b).

* * * * *

Respectfully submitted,



8/14/06

Royal W. Craig
Registration No. 34,145
Ober/Kaler
120 East Baltimore Street
Suite 800
Baltimore, MD 21202
410-347-7303

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re U.S. Utility Patent Application of

Butz, Stephen

Art Unit: 2163

Appln. No. 09/976,481

Examiner: Charles Edward Lu

Filed: 12 October 2001

For: SOFTWARE SYSTEM FOR QUANTITATIVE MEASUREMENT AND
ACCOUNTABILITY FOR SOCIAL SERVICES

* * *

DECLARATION UNDER 37 CFR SECTION 1.137(b)(1)

The Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

I, Dimitri Michel, being duly sworn, state that I was administrative assistant of the Law Offices of Royal W. Craig of which the managing partner, Royal W. Craig, is the attorney prosecuting the above-captioned case. I further declare and state the following.

1. The above-identified application appears to be abandoned for failure to file a timely and proper reply in a timely manner to an Office Action dated 03 November 2005. The subject Reply is shown by the Patent Office PAIR system to have been filed on May 5, 2006. While no Notice of Abandonment has issued, the Examiner has indicated that the subject Reply is considered to be untimely.
2. I believe that I have properly and timely filed the Response. Mr. Craig handed me a signed Amendment and instructed me to file it by facsimile with mail confirmation. As I

was accustomed, I prepared the fax transmittal cover sheet to reflect the art unit facsimile number listed in the Official Action, which was 703-872-9306. When I tried this fax number I found that facsimile number to be non-functional. I called the art unit receptionist and was told that the art unit had moved to Alexandria. The receptionist gave me a new facsimile number 571-272-8594. I prepared another cover sheet and this time successfully faxed the Amendment to the new facsimile number [Appendix A "TX REPORT"]. All pages of the facsimile and the cover sheet are shown as having been successfully and timely transmitted on January 19, 2006 per the TX REPORT.

In hindsight I believe that I unintentionally deviated from proper procedure when preparing this second cover sheet in that I used a generic fax cover sheet (lacking a signed Certificate of Facsimile Transmission), and despite this time successfully faxing the Amendment to the new facsimile number it appears to have been lacking a signed Certificate of Facsimile Transmission. I did not appreciate this fact until later.

3. I called the Examiner to follow up by phone on April 5, 2006, and was informed that the Examiner had not received the Amendment. The Examiner requested a duplicate copy and I provided this by fax on April 5, 2006 [Appendix B].
4. I called the Examiner again to follow up by phone on May 10, 2006 and was informed that the Amendment could not be given proper credit because the 8594 number was not a central fax number. At this juncture the Examiner provided me with a central facsimile number 571-273-8300. I again faxed the Amendment to the central facsimile number 571-273-8300 [Appendix C].

5. I called the Examiner again to follow up by phone on May 11, 2006, and was informed that Amendment was considered untimely due to the fact that the January 19, 2006 transmission had gone to something other than a central fax number (apparently the Examiner's personal fax number). At this time I still believed that I had followed proper procedure, trying unsuccessfully to transmit to the art unit Crystal City facsimile number listed in the Official Action, calling the art unit to get the correct fax number 571-272-8594, and successfully transmitting thereto.
6. I reported this to Mr. Craig the attorney handling the case, and I am cognizant that he filed a Petition Under 37 CFR § 1.181(a) Requesting Withdrawal Of The Holding Of Abandonment on June 9, 2006. I am also cognizant of the Denial of this Petition on August 6, 2006, which explained that a grantable petition under that section must be accompanied by proof that the Response transmitted by facsimile on January 19, 2006 was accompanied by a proper Certificate of Facsimile Transmission. Upon further inspection of the file and discussion with Mr. Craig it now became fairly apparent that I inadvertently omitted the normal Certificate of Facsimile Transmission when I prepared the second fax cover sheet to reflect the changed Art Unit fax number. Again in hindsight I believe that I used a generic facsimile cover sheet lacking a Certificate of Facsimile Transmission.
7. Nevertheless, this oversight was purely unintentional and I exercised all possible effort and persistence in trying to ascertain the situation with the Examiner and the untimely Response, and all due haste in correcting the situation once ascertained. I submit that the

entire delay in filing the required Response from the due date for filing the Response until the filing of this Petition under 37 C.F.R. 1.137(b) was unintentional.

* * * * *

I declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true.

I further declare that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or by both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the above-referenced patent application.

Respectfully submitted,


Dimitri Michel

Date 8/14/06

Ober|Kaler
120 East Baltimore Street
Suite 800
Baltimore, MD 21202
410-347-7303

Appendix A “TX REPORT”

FACSIMILE COVER PAGE

Date: JANUARY 19, 2006

To: Primary Examiner: CHARLES E. LU - ph# • 571-272-8594

Total Pages (including cover page):

Fax: 571-273-8594

From:

Law Offices of Royal W. Craig
10 North Calvert Street, Suite 153
Baltimore, Maryland 21202

Voice #: 410-385-2383

Fax #: 410-385-2385

MESSAGE

REF: 09/976,481

CONFIRMATION COPY WILL FOLLOW: YES (✓) No ()

CONFIRMATION COPY VIA FIRST CLASS MAIL

CONFIDENTIALITY NOTICE: Unauthorized interception and use of this telephonic communication could be a violation of Federal and State Law. The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original document to us.

IF YOU HAVE ANY PROBLEM RECEIVING THIS FAX, CALL NATALIE LAWRENCE AT (410)385-2383.

Appendix B

RESIDENT OFFICE

120 East Baltimore Street
Baltimore, MD 21202-1643
410-685-1120
fax 410-547-0699

ADDITIONAL OFFICES

1401 H Street, NW, Ste. 500
Washington, DC 20005-3324
202-408-8400
fax 202-408-0640

407 N. Washington St., Ste. 105
Falls Church, VA 22046
703-237-0126
fax 202-408-0640

409 Washington Ave., Ste 1010
Towson, MD 21204
410-296-1160
fax 410-296-3974

To: Primary Examiner Lu

From: Royal W. Craig

Fax: 571-273-8594

Pages: 29

File #: 09/976,481

Date: April 5, 2006

Re: BUTZ-PA

***** Important Notice *****

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

Appendix C

OBER KALER
Attorneys at LawAttorneys at Law
www.ober.com**FACSIMILE****RECEIVED**
CENTRAL FAX CENTER
MAY 10 2006**RESIDENT OFFICE**120 East Baltimore Street
Baltimore, MD 21202-1643
410-685-1120
fax 410-547-0699**ADDITIONAL OFFICES**1401 H Street, NW, Ste. 500
Washington, DC 20005-3324
202-408-8400
fax 202-408-0640407 N. Washington St., Ste. 105
Falls Church, VA 22046
703-237-0126
fax 202-408-0640409 Washington Ave., Ste 1010
Towson, MD 21204
410-298-1160
fax 410-296-3974**To:** Primary Examiner Lu**From:** Royal W. Craig**Fax:** 571-273-8300**Pages:** 32**File #:** 09/976,481**Date:** May 10, 2006**Re:** BUTZ-PA

Thank you

***** Important Notice *****

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.